



House of Representatives

General Assembly

File No. 602

January Session, 2003

Substitute House Bill No. 6698

House of Representatives, April 30, 2003

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING DRUNKEN DRIVING.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (g) of section 14-227a of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2003*):

4 (g) Any person who violates any provision of subsection (a) of this
5 section shall: (1) For conviction of a first violation, (A) be fined not less
6 than five hundred dollars nor more than one thousand dollars, and (B)
7 be (i) imprisoned not more than six months, forty-eight consecutive
8 hours of which may not be suspended or reduced in any manner, or
9 (ii) imprisoned not more than six months, with the execution of such
10 sentence of imprisonment suspended entirely and a period of
11 probation imposed requiring as a condition of such probation that
12 such person perform one hundred hours of community service, as
13 defined in section 14-227e, and (C) have such person's motor vehicle
14 operator's license or nonresident operating privilege suspended for

15 one year; (2) for conviction of a second violation within ten years after
16 a prior conviction for the same offense, (A) be fined not less than one
17 thousand dollars nor more than four thousand dollars, (B) be
18 imprisoned not more than two years, one hundred twenty consecutive
19 days of which may not be suspended or reduced in any manner, and
20 sentenced to a period of probation requiring as a condition of such
21 probation that such person perform one hundred hours of community
22 service, as defined in section 14-227e, and (C) (i) have such person's
23 motor vehicle operator's license or nonresident operating privilege
24 suspended for three years or until the date of such person's twenty-
25 first birthday, whichever is longer, or (ii) if such person has been
26 convicted of a violation of subdivision (1) of subsection (a) of this
27 section on account of being under the influence of intoxicating liquor
28 or of subdivision (2) of subsection (a) of this section, have such
29 person's motor vehicle operator's license or nonresident operating
30 privilege suspended for one year and be prohibited for the two-year
31 period following completion of such period of suspension from
32 operating a motor vehicle unless such motor vehicle is equipped with
33 a functioning, approved ignition interlock device, as defined in section
34 3 of this act; and (3) for conviction of a third and subsequent violation
35 within ten years after a prior conviction for the same offense, (A) be
36 fined not less than two thousand dollars nor more than eight thousand
37 dollars, (B) be imprisoned not more than three years, one year of which
38 may not be suspended or reduced in any manner, and sentenced to a
39 period of probation requiring as a condition of such probation that
40 such person perform one hundred hours of community service, as
41 defined in section 14-227e, and (C) have such person's motor vehicle
42 operator's license or nonresident operating privilege permanently
43 revoked upon such third offense. For purposes of the imposition of
44 penalties for a second or third and subsequent offense pursuant to this
45 subsection, a conviction under the provisions of subsection (a) of this
46 section in effect on October 1, 1981, or as amended thereafter, a
47 conviction under the provisions of either subdivision (1) or (2) of
48 subsection (a) of this section, a conviction under the provisions of
49 section 53a-56b or 53a-60d or a conviction in any other state of any

50 offense the essential elements of which are determined by the court to
51 be substantially the same as subdivision (1) or (2) of subsection (a) of
52 this section or section 53a-56b or 53a-60d, shall constitute a prior
53 conviction for the same offense.

54 Sec. 2. Subsection (h) of section 14-227a of the general statutes is
55 repealed and the following is substituted in lieu thereof (*Effective*
56 *October 1, 2003*):

57 (h) (1) Each court shall report each conviction under subsection (a)
58 of this section to the Commissioner of Motor Vehicles, in accordance
59 with the provisions of section 14-141. The commissioner shall suspend
60 the motor vehicle operator's license or nonresident operating privilege
61 of the person reported as convicted for the period of time required by
62 subsection (g) of this section, as amended by this act. The
63 commissioner shall determine the period of time required by said
64 subsection (g) based on the number of convictions such person has had
65 within the specified time period according to such person's driving
66 history record, notwithstanding the sentence imposed by the court for
67 such conviction. The period of suspension shall commence on the date
68 of conviction, except that if such person is sentenced to a term of
69 imprisonment, the execution of which is not suspended entirely, the
70 period of suspension shall commence on the date such person is
71 released from incarceration. (2) The motor vehicle operator's license or
72 nonresident operating privilege of a person found guilty under
73 subsection (a) of this section who is under eighteen years of age shall
74 be suspended by the commissioner for the period of time set forth in
75 subsection (g) of this section, or until such person attains the age of
76 eighteen years, whichever period is longer. (3) The motor vehicle
77 operator's license or nonresident operating privilege of a person found
78 guilty under subsection (a) of this section who, at the time of the
79 offense, was operating a motor vehicle in accordance with a special
80 operator's permit issued pursuant to section 14-37a shall be suspended
81 by the commissioner for twice the period of time set forth in subsection
82 (g) of this section. (4) If an appeal of any conviction under subsection
83 (a) of this section is taken, the suspension of the motor vehicle

84 operator's license or nonresident operating privilege by the
85 commissioner, in accordance with this subsection, shall be stayed
86 during the pendency of such appeal.

87 Sec. 3. (NEW) (*Effective October 1, 2003*) (a) For the purposes of this
88 section and section 4 of this act:

89 (1) "Ignition interlock device" means a device installed in a motor
90 vehicle that measures the blood alcohol content of the operator and
91 disallows the mechanical operation of such motor vehicle until the
92 blood alcohol content of such operator is less than eight-hundredths of
93 one per cent; and

94 (2) "Immobilization device" means a device installed on a motor
95 vehicle that physically or mechanically prevents such motor vehicle
96 from being operated.

97 (b) Any person who has been arrested for a violation of subsection
98 (a) of section 14-227a of the general statutes, section 53a-56b of the
99 general statutes, or section 53a-60d of the general statutes, may be
100 ordered by the court not to operate any motor vehicle unless such
101 motor vehicle is equipped with an ignition interlock device, or may be
102 ordered by the court after a hearing to install an immobilization device
103 on any motor vehicle that such person owns, leases or otherwise has
104 the right to operate. Any such order may be made as a condition of
105 such person's release on bail or as a condition of granting such person's
106 application for participation in the pretrial alcohol education system
107 under section 54-56g of the general statutes, and may include any
108 other terms and conditions as to duration, use, proof of installation or
109 any other matter that the court determines to be appropriate or
110 necessary.

111 (c) All costs of installing and maintaining an ignition interlock
112 device or immobilization device shall be borne by the person who is
113 the subject of an order made pursuant to subsection (b) of this section.
114 If any such person claims to be unable to pay such costs, such person
115 shall file with the court an affidavit of indigency or inability to pay. If

116 such indigency or inability to pay is confirmed by the Court Support
117 Services Division, the court may enter a finding thereof, and such costs
118 of installing and maintaining an ignition interlock or immobilization
119 device, as the case may be, shall be paid by the state from the budget of
120 the Judicial Department.

121 (d) The Commissioner of Public Health shall adopt regulations, in
122 accordance with chapter 54 of the general statutes, for the approval of
123 ignition interlock devices, and for the proper calibration and
124 maintenance of such devices. The Commissioner of Motor Vehicles
125 shall adopt regulations, in accordance with chapter 54 of the general
126 statutes, for the approval of immobilization devices. No ignition
127 interlock device or immobilization device shall be installed pursuant to
128 an order of the court under subsection (b) of this section unless such
129 device has been approved under such regulations.

130 (e) No provision of this section shall be construed to authorize the
131 operation of a motor vehicle by any person whose motor vehicle
132 operator's license has been refused, suspended or revoked, or who
133 does not hold a valid motor vehicle operator's license. A court shall
134 inform the Commissioner of Motor Vehicles of each order made by it
135 pursuant to subsection (b) of this section. If any person who has been
136 ordered to install an ignition interlock device is the holder of a special
137 permit to operate a motor vehicle for employment purposes, issued by
138 the commissioner under the provisions of section 14-37a of the general
139 statutes, strict compliance with the terms of the order shall be deemed
140 a condition to hold such permit, and any failure to comply with such
141 order shall be sufficient cause for immediate revocation of the permit
142 by the commissioner.

143 Sec. 4. (NEW) (*Effective October 1, 2003*) (a) No person whose right to
144 operate a motor vehicle has been restricted pursuant to an order of the
145 court under subsection (b) of section 3 of this act shall (1) request or
146 solicit another person to blow into an ignition interlock device or to
147 start a motor vehicle equipped with an ignition interlock device for the
148 purpose of providing such person with an operable motor vehicle, or

149 (2) operate any motor vehicle not equipped with a functioning ignition
150 interlock device or any motor vehicle that a court has ordered such
151 person not to operate.

152 (b) No person shall tamper with, alter or bypass the operation of an
153 ignition interlock device or immobilization device for the purpose of
154 providing an operable motor vehicle to a person whose right to
155 operate a motor vehicle has been restricted pursuant to an order of the
156 court under subsection (b) of section 3 of this act.

157 (c) Any person who violates any provision of subsection (a) or (b) of
158 this section shall be guilty of a class C misdemeanor.

159 (d) Each court shall report each conviction under subsection (a) or
160 (b) of this section to the Commissioner of Motor Vehicles, in
161 accordance with the provisions of section 14-141 of the general
162 statutes. The commissioner shall suspend the motor vehicle operator's
163 license or nonresident operating privilege of the person reported as
164 convicted for a period of one year.

165 Sec. 5. Section 14-227c of the general statutes is repealed and the
166 following is substituted in lieu thereof (*Effective October 1, 2003*):

167 (a) As part of the investigation of any motor vehicle accident
168 resulting in [a fatality] the death of a person, the Chief Medical
169 Examiner, Deputy Chief Medical Examiner, an associate medical
170 examiner, a pathologist as specified in section 19a-405, or an
171 authorized assistant medical examiner, as the case may be, shall order
172 that a blood sample be taken from the body of any operator or
173 pedestrian who dies as a result of such accident. Such blood samples
174 shall be examined for the presence and concentration of alcohol and
175 any drug by the Division of Scientific Services within the Department
176 of Public Safety or by the Office of the Chief Medical Examiner.
177 Nothing in this subsection or section 19a-406 shall be construed as
178 requiring such medical examiner to perform an autopsy in connection
179 with obtaining such blood samples.

180 (b) [To the extent provided by law, a] A blood or breath sample
 181 [may also] shall be obtained from any surviving operator whose motor
 182 vehicle is involved in [such] an accident resulting in the serious
 183 physical injury, as defined in section 53a-3, or death of another person,
 184 if a police officer has probable cause to believe that such operator
 185 operated such motor vehicle while under the influence of intoxicating
 186 liquor or any drug, or both. The test shall be performed by or at the
 187 direction of a police officer according to methods and with equipment
 188 approved by the Department of Public Safety and shall be performed
 189 by a person certified or recertified for such purpose by said
 190 department or recertified by persons certified as instructors by the
 191 Commissioner of Public Safety. The equipment used for such test shall
 192 be checked for accuracy by a person certified by the Department of
 193 Public Safety immediately before and after such test is performed. If a
 194 blood test is performed, it shall be on a blood sample taken by a person
 195 licensed to practice medicine and surgery in this state, a qualified
 196 laboratory technician, an emergency medical technician II, a registered
 197 nurse or a phlebotomist. The blood samples obtained from [the
 198 surviving] an operator pursuant to this subsection shall be examined
 199 for the presence and concentration of alcohol and any drug by the
 200 Division of Scientific Services within the Department of Public Safety.
 201 [Nothing in this section or section 19a-406 shall be construed as
 202 requiring such medical examiner to perform an autopsy in connection
 203 with obtaining such blood samples.]

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>
Sec. 3	<i>October 1, 2003</i>
Sec. 4	<i>October 1, 2003</i>
Sec. 5	<i>October 1, 2003</i>

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Type	FY 04 \$	FY 05 \$
Transportation, Dept.	TF - Funds Transferred	5,700,000	0
Judicial Dept.	GF - Cost	311,250	415,000
Public Safety, Dept.	GF - Cost	Minimal	Minimal
Motor Vehicle Dept.	TF - Cost	24,000	0
Public Health, Dept.	GF - Cost	10,000	0
Correction, Dept.; Judicial Dept.	GF - Cost	Potential	Potential

Note: TF=Transportation Fund; GF=General Fund

Municipal Impact: None

Explanation

Federal Funds - Repeat Offender/Interlock Ignition

Currently, the state of Connecticut does not enforce a "repeat offender" law. Therefore, federal funds are being transferred from construction projects (Interstate Maintenance, National Highway System, and Surface Transportation) into the 402 Highway Safety program. Since the bill appears to make it mandatory for the courts to impose the ignition interlock and vehicle immobilization requirements on repeat offenders, approximately \$5.7 million currently being transferred to the Highway Safety program will not be transferred to said program and will become available for highway construction projects.

Judicial Department

The bill requires the Judicial Department to pay the cost of installing and maintaining ignition interlock devices for any person deemed by the court to be indigent who has been convicted of a first or second offense for operating a motor vehicle while under the influence of

alcohol or drugs (DUI). In FY 02 there were 5,654 DUI convictions. The estimated, annual cost is up to \$415,000.¹

Department of Public Safety

Current law allows for the taking of a blood or breath sample to test for alcohol from any surviving vehicle operator in accidents involving fatalities. Last year there were over 300 motor vehicle fatalities in Connecticut. This bill requires that such tests be taken from surviving operators when there is serious physical injury or there is probable cause to believe the operator was under the influence. In addition, the bill suggests that individuals be tested for drugs as well as alcohol. This implies that the number of blood tests taken would increase since drugs can only be detected through such tests. It is anticipated that passage of the bill would result in increased workload and minimal costs to the Department of Public Safety.

Dept. of Motor Vehicles - Transportation Fund

This bill requires the courts to notify the Department of Motor Vehicles (DMV) of cases where persons are convicted of misusing the ignition interlock device or the vehicle immobilization requirement, and mandates the Commissioner of Motor Vehicles to suspend the driver's licenses for one year. This provision would result in a one-time cost totaling \$24,000 for the DMV to pay a contractor to develop a new suspension category and complete associated computer programming changes. Other administrative requirements such as developing a new suspension notice, and the adoption of regulations, can be handled by staff within normal duties and responsibilities.

Department of Public Health

A one-time cost of approximately \$10,000 will result from the passage of Section 3(d), which requires the Department of Public Health (DPH) to adopt regulations regarding ignition interlock devices. Commencing in FY 00, all staff and resources of DPH's

¹ Based on 415 indigent persons and an average cost of \$1,000.

Toxicology/Criminology Laboratory were moved to the Department of Public Safety. Since DPH no longer employs staff with expertise in this area, it will have to retain consulting forensic toxicologist services.

Criminal Penalties

The bill makes it a crime to attempt to circumvent the ignition interlock device. An offense is punishable by a fine of up to \$500 and/or imprisonment of up to 3 months. The cost of 3 months imprisonment is about \$7,600 on average. Alternatively, the average cost of monitoring by the court for 3 months can range from \$11 to \$65, depending upon the type of community supervision needed for offenders under the bill. The number of potential offenses is indeterminate.

OLR Bill Analysis

sHB 6698

AN ACT CONCERNING DRUNKEN DRIVING**SUMMARY:**

This bill:

1. allows a court to order, for an indefinite period as a condition of granting either release on bail or an application for participation in the pretrial alcohol education program, anyone who has been arrested for driving under the influence of alcohol or drugs (DWI), or manslaughter or assault with a motor vehicle while operating under the influence of alcohol or drugs, to (a) operate a motor vehicle only if it is equipped with an ignition interlock device or, as an alternative, (b) require any vehicle he owns, leases or operates be physically or mechanically immobilized;
2. appears to require a court to substitute an ignition interlock order for two years of the three-year mandatory license suspension that someone convicted of alcohol-related DWI for a second time within 10 years must get;
3. makes it a crime to attempt to circumvent the ignition interlock or vehicle immobilization requirements, and subjects anyone convicted of this offense to a one-year license suspension in addition to the criminal penalties;
4. requires, rather than allows, a blood or breath test to be conducted on any driver who survives an accident that results in a death or serious physical injury when a police officer has probable cause to believe the person was driving under the influence of alcohol or drugs;
5. requires that tests of fatally injured drivers or pedestrians, or surviving operators to the extent the bill permits them, show the presence of any drug, as well as alcohol; and
6. requires that a license suspension resulting from a DWI conviction begin on the date of conviction, or, if the person is sentenced to a

term of imprisonment that is not suspended entirely, on the date he is released from incarceration.

EFFECTIVE DATE: October 1, 2003

IGNITION INTERLOCK AND IMMOBILIZATION DEVICE

Definitions

The bill defines an "ignition interlock device" as a device installed on a motor vehicle that measures the blood alcohol content of the operator and does not allow operation of the vehicle until the operator's blood alcohol content is less than .08%.

An "immobilization device" is a device installed on a motor vehicle that physically or mechanically prevents the vehicle from being operated.

Court Order

The bill allows the court to order anyone arrested for DWI, second degree manslaughter with a motor vehicle, and second degree assault with a motor vehicle to not operate a motor vehicle unless it is equipped with an ignition interlock device. The court can also issue an order requiring installation of an immobilization device on any vehicles the person owns, leases, or has the right to operate, but it must first hold a hearing. The order may be made a condition of bail or of granting an application for the pretrial alcohol education program. The order may include any use and proof-of-installation terms and conditions the court deems appropriate, and the duration of the order can be for whatever period of time the court sets.

Second DWI Offense

By law when a person is convicted of a second DWI violation within 10 years of the first, among other penalties, his driver's license or nonresident operating privilege must be suspended for three years or until he or she reaches age 21, whichever is longer. In cases where the DWI conviction was for alcohol rather than drugs, the bill appears to require the court instead to suspend the license for one year followed by a two-year ignition interlock order prohibiting the person from operating a vehicle that is not equipped with the device.

Cost of Installing Interlock or Immobilization Devices

The offender must bear the cost of installing and maintaining the device. If this person claims to be unable to pay, he or she must file an affidavit of indigence or inability to pay. If the Court Support Services Division confirms the affidavit, the costs will be paid from the Judicial Branch's budget.

Regulations

The bill requires the commissioner of the Department of Public Health to adopt regulations for the approval of ignition interlock devices and their proper calibration. The commissioner of the Department of Motor Vehicles (DMV) must adopt regulations for the approval of immobilization devices. The bill prohibits installation of any ignition interlock or immobilization device pursuant to a court order that has not been approved subject to these regulations.

DMV Notification

The bill specifies that these provisions must not be construed to authorize vehicle operation by anyone whose license has been refused, suspended, or revoked, or who does not hold a license. The court must inform the DMV commissioner of any ignition interlock order it makes. If an interlock is ordered for anyone who holds a special "employment only" driving permit, strict compliance with the court order must be a condition for continuing to hold the permit. Failure to comply is grounds for immediate permit revocation.

Interlock and Immobilization Device Offenses

The bill makes it a class C misdemeanor, punishable by a fine of up to \$500, imprisonment for up to three months, or both for a person who is subject to an order to:

1. ask someone to blow into the interlock device or start a motor vehicle equipped with such a device in order to provide the subject of the order with an operable vehicle, or
2. operate any vehicle not equipped with a functioning interlock device or any vehicle the court has ordered the person not to operate.

The bill also makes it a class C misdemeanor for anyone to tamper with, alter, or bypass an ignition interlock or immobilization device for the purpose of providing someone subject to an order with an operable vehicle.

These crimes potentially apply to someone who is subject to a post-arrest order. They do not apply to a person sentenced for a second DWI conviction.

In addition to the criminal penalties, the bill requires the court to report anyone convicted of these offenses to the DMV commissioner who must suspend the person's operator's license for one year.

BLOOD OR BREATH TESTS FOLLOWING ACCIDENTS

Under current law, as part of the investigation of any motor vehicle accident resulting in a death, the chief medical examiner or other pathologist must order a blood sample taken from any deceased driver or pedestrian and examined for the presence of alcohol. In addition, to the extent allowed by law, a blood or breath sample may be taken from any surviving vehicle operator and tested for alcohol. The bill requires that such a blood or breath test be taken from any surviving operator when (1) the accident resulted in serious physical injury and (2) the police have probable cause to believe the operator was under the influence. A serious physical injury is one that creates a substantial risk of death or that causes serious disfigurement, serious impairment of health, or serious loss or impairment of the function of a bodily organ. The bill also requires that both tests examine for the presence of any drug as well as alcohol. (Since evidentiary breath tests cannot reliably detect the presence of drugs, the bill, in effect, would require blood tests of surviving operators.)

BACKGROUND

Operating Under the Influence

By law, someone is guilty of DWI when they operate a motor vehicle on a public highway or road, on a private road with a speed limit, in a parking area for more than nine cars, or on school property (1) while under the influence of "intoxicating liquor or any drug or both" or (2) with a blood alcohol level of .08% or above. In the first instance, the offense may be prosecuted with or without any direct evidence of a

person's blood alcohol level.

Second Degree Manslaughter with a Motor Vehicle

A person is guilty of this crime if he operates a motor vehicle under the influence of intoxicating liquor or any drug or both and causes the death of another person as a consequence of the effect of the liquor or drug.

Second Degree Assault With a Motor Vehicle

A person is guilty of this crime if he operates a motor vehicle under the influence of intoxicating liquor or any drug or both and causes serious physical injury to another person as a consequence of the effect of liquor or drug.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 39 Nay 2